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ABSTRACT

This study guide is a product of the Idaho Humanities Council (IHC). The guide is the result of IHC's July 2002 summer institute for teachers held at Albertson College of Idaho (Caldwell). Twenty five Idaho teachers participated. They explored U.S. Constitutional issues and political decisions and participated in a simulated congressional hearing as a culminating activity. The guide is divided into six units: (1) "What are the philosophical and historical foundations of the American political system?"; (2) "How did the framers create the Constitution?"; (3) "How did the values and principles embodied in the Constitution shape American institutions and practices?"; (4) "How have the protections of the Bill of Rights been developed and expanded?"; (5) "What rights does the Bill of Rights protect?"; and (6) "What are the roles of the citizen in American democracy?" Each unit includes student questions. Contains an extensive bibliography of suggested texts (Steve Shaw). (BT)

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PARADOX POLITICS

JULY 14-20, 2002

IDAHO Humanities COUNCIL

SO 035 019

Paradox Politics

Idaho Political History Since World War II

A STUDY GUIDE FOR TEACHERS

Based on the Unit Questions from

We the People: The Citizen and the Constitution

(a publication of the Center for Civic Education)

IDAHO Humanities COUNCIL

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INTRODUCTION

This study guide is a product of the Idaho Humanities Council (IHC). The guide is the result of IHC's summer institute for teachers, *Paradox Politics: Idaho Political History Since World War II*, which was held at the Albertson College of Idaho, Caldwell, in July 2002.

Twenty-five teachers from around the state attended the institute. The institute scholars explored the political decisions and Constitutional issues surrounding contemporary Idaho history, including human rights, tribal sovereignty, water, the environment, and Frank Church and the Vietnam era. The daily scholarly presentations provided historical background of these issues.

Participants also explored broader Constitutional issues, correlated to the Idaho Achievement Standards in Civics and Government, and participated in a simulated congressional hearing as a culminating activity. Experienced teacher mentors assisted participants in discussing the challenges of teaching civic education and preparing for the culminating hearing. This study guide is the result of the hearing and is based on the unit questions from *We the People: The Citizen and the Constitution.*

Institute texts included ***Paradox Politics***, by Randy Stapilus, ***We, the People: The Citizen and the Constitution***, and ***Idaho's Governors: Historical Essays on their Administrations***, edited by Robert Sims and Hope Benedict. Teachers also received supplementary books and a notebook containing related essays and articles recommended by the presenting scholars.

The institute was made possible in part by the **Center for Civic Education**, the **Idaho State Department of Education**, the **Whittenberger Foundation**, the **Idaho Law Foundation**, and the **National Endowment for the Humanities**

The conclusions or opinions in this work do not necessarily represent the views of either the Idaho Humanities Council, the National Endowment for the Humanities, or other sponsoring parties.

Paradox Politics: Idaho Political History Since World War II
Study Guide, 2002

Contributing Teachers:

Candi Abou-Bakr	Highland High School
Jeff Blain	Snake River High School
Daniel Butler	Bonners Ferry High School
Gail Chumbley	Eagle High School
Janet Gates	William Thomas Middle School
Shane Hild	Filer High School
Jeanette Jackson	Caldwell High School
Janet Liston	Mt. Cove High School
Bert Marley	Marsh Valley High School
Michael May	Century High School
Dennis Moses	Minico High School
Karen Moss	Caldwell High School
Brad Patzer	Mtn. View High School
Kelly Richmond	Les Bois Jr. High
Linda Rickard	McCall-Donnelly High School
Theresa Silvester	Buhl Middle School
Barney Skoro	Centennial High School
Michael Welch	Marsh Valley High School
Marjorie Woodhouse	Oakley High School

Mentor Teachers:

Steve Goodbody	Wendell High School
Cynthia Jenkins	Borah High School
Brian Johnson	Pendleton High School
Arlene Jones	Pasco High School
Robby Sauer	Bliss High School
Cindy Wilson	Orofino High School

Scholars:

David Adler	Idaho State University
Katherine Aiken	University of Idaho
LeRoy Ashby	Washington State University
John Freemuth	Boise State University
Ross Peterson	Utah State University, Emeritus
Stephen Shaw	Northwest Nazarene University
Robert Sims	Boise State University, Emeritus
Mark Trahant	Maynard Institute

Idaho Humanities Council Staff:

Rick Ardinger	Executive Director
Will Simons	Assistant Director
Cindy Wang	Grants and Fiscal Officer
Jennifer Holley	Administrative Assistant

Curriculum Coordinator:

Dan Prinzing	Idaho Department of Education
Deanie Grant	Assistant, Idaho Department of Education

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Hearing Questions
Congressional District Level

Unit I: What Are the Philosophical and Historical Foundations of the American Political System?

1. **How were the Founders' views about government influenced both by classical republicans and the natural rights philosophers?**

   - Why did classical republicans believe in limiting individual rights and promoting civic virtue?

     a. What conflicts might arise in a society that emphasizes the importance of both individual rights and the common good?

     b. Why did the classical republicans stress the need for moral education and homogeneity?

   - Is classical republican philosophy relevant today? How?

2. **What are the fundamental characteristics of a constitutional government?**

   - What are the essential differences between a constitutional government and an autocratic or dictatorial government?

   - Describe at least five provisions of the United States Constitution that provide a means of preventing the abuse or misuse of governmental power and explain how they work in our system of government today.

3. **What effect did colonial experiences have on the Founders' views about rights and government?**

   - In what ways were eighteenth-century American and British societies similar or dissimilar in terms of rights of individual liberty, equality of opportunity, and property?

   - How did early state constitutions reflect colonial experiences as well as the ideas of classical republicanism and the natural rights philosophy?

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Unit 1
Question 1

Representative Smylie referred to economic problems facing the state in his July 16th presentation. When asked about the possible necessity of promoting a tax increase, he responded that it would not be a politically wise move to do so, particularly in an election year. This is an example of a difference between the natural rights philosophy and classical republicanism. The natural rights philosophy stresses that people have the right to pursue their own welfare – in this case, political self-preservation. Classical republicanism, on the other hand, calls for the need to promote the common good above the rights of the individual – people should be willing to throw themselves on the sword of public opinion, knowing they are doing the right thing for society as a whole.

The Constitution can trace its intellectual origins and sources deep into the past. Its sources have often seemed to be the whole of previous history. It is apparent, and easy to find examples of the Natural Rights Philosophy influencing the founders. One needs only to read the Declaration of Independence and the Constitution to locate examples – the Preamble, the 10th and 14th Amendment, and the protection of these through the legislative, executive and judicial branches. To connect, however, Classical Republicanism takes more examination. How could a theory that promotes limiting a persons right to read, think or earn money serve as a springboard to our form of government? Basic tenets of classical republicanism, however, do include frequent elections, an insistence that government advance the common good, the sharing of political authority amongst citizens and chosen representatives exercising this authority, and the emphasis on civic virtue. These are cornerstones of American government. George Washington was indeed so highly esteemed by his countrymen because he was

believed to have sacrificed his own interests for the sake of a fledgling nation – the epitome of Classical Republicanism.

- Classical Republicanism demanded that their citizens have a high degree of civic virtue. Citizens were expected to participate fully in their government to promote the common good. They were discouraged from spending time reading, caring for their families, or thinking about things other than government. Republics had to be held together from below, from the very sacrifice of the people themselves. If the people did not sacrifice these individual rights, they might stop being reliable and fully dedicated to the common good.
- Conflicts might arise in a society that emphasized the importance of both individual rights and the common good. Government can be created that places an emphasis on the rights of individuals and encourages working towards the common good, but to emphasize both asks society to participate fully in both. If individual behavior is motivated by self interest, then the pursuit of ones own welfare inevitably results in a diversity of beliefs, wealth and ways of life, and the promotion of the common good can no longer exist as a primary emphasis. The United States emphasizes the pursuit of ones self interest, and while we idealize a society wherein the promotion of the common good is the preeminent goal, we find ourselves having to legislate the common good. Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency (2001) is a classic example of self interest versus the common good. Homeowners, pursuing the American dream of a retirement home, in this case on the banks of Lake Tahoe, have been denied permission to do so due to a moratorium on development in the name of

environmental integrity. Other such examples include character education, community service in schools, and the mandatory pledging of allegiance in the schools.

- Classical republicanism holds that civic virtue is not an automatic virtue. Citizens must be taught, through moral education, to be virtuous. The upbringing of the next generation provides a guarantee of the continuation of the common good. This is why small, uniform communities were also of utmost importance. A small community is a necessity if people are to know and care for each other. If communities were to become to large and diverse, people would begin to divide into factions, and promote not the common good, but instead, the good as identified by their faction.
- In the United States today, elements of Classical Republicanism are still relevant. Responding to September 11, in part, President Bush has encouraged citizens to dedicate 2 years to serving their community. We laud Former President Jimmy Carter for his continuing and unselfish commitment to Habitat for Humanity. Church membership is increasing. Federal monies are being provided to faith based charities with the intent that local organizations better serve the needs of a local community. The State of Idaho is encouraging the teaching of character education in schools. These are all relevant examples.
- In conclusion, it is evident that the Founders utilized both the Natural Rights philosophy and Classical Republicanism when setting the course for our country.

Unit 1
Question 2

I

"In a society of true democracy, the political system of which ensures effective management of all public affairs, there needs ever more active participation of the people in running the state, and the combining of citizen's real rights and freedoms with their obligations and responsibility to society." This is a quote from the preamble to the Soviet Union Constitution.

The fundamental characteristics of a constitutional government are this: there is a Constitution, that Constitution must limit the power of the government and, there must be some way to enforce the limitations on that government. This is not to say that simply having a written document insures a constitutional form of government. Aristotle, in Politics, describes a constitution as an arrangement of political officers designating the powers and responsibilities of those offices. This definition provides that all governments are constitutional in nature, but are not constitutional governments.

The Soviet Union, which had one of the longest and most elaborate constitutions in history, was not a true constitutional government. Instead, the Stalin's Soviet Union is by definition a dictatorial government and further falls under the definition of an autocratic government in that there was no one that enforced the limitations that the constitution set forth.

Madison knew that it was important that a constitution limit the power of government. To do this, he divided the governing power among three branches and utilized a system of checks and balances.

Examples of Constitutional provisions to prevent abuses of power can be found throughout the document.

Unit 1
Question 2

2

- Article 1, Section 2, Clause 1 states that all citizens eligible to do so vote for the House of Representatives every second year. Mortimer Adler writes that "The government resides in the power of the people who have been made citizens. The officeholders in Washington and elsewhere are its administrators. They are the servants of the people. We acknowledge that fact when, after national elections that change the party in officer, we talk about a new administration, not a new government."
- Article 1, Section 3, Clause 6 states that the Senate is the only body to try impeachments. Impeachments are only to be used when a public official could be charged with a crime in office for which they can be removed. We have seen this power used recently in the 1998 impeachment trials of President Bill Clinton.
- Article 1, Section 8, Clause 11 states that Congress shall have the power to declare war. This important power, however, has been diluted by the continuing acquisition of power by presidents since the 1950's. For example, Dr. David Adler spoke about the September 18 Use of Force Resolution in which Congress gave the president in effect a blank check – the ability to decide when war should be declared, against whom, and for how long.
- Article 1, Section 9, Clause 2 states that Congress shall be denied the right to suspend the writ of habeas corpus, except in cases of rebellion or invasion.

Unit 1
Question 2

3

- Article 3 establishes a separate judicial branch. Many scholars view this as the most important part of the Constitution. The judiciary is independent and coequal to the legislative and executive branches and has been strengthened through the doctrine of judicial review. Alexander Hamilton writes in Federalist 78 that " the interpretation of the laws is the proper province of the courts. A constitution is in fact, and must be regarded as, fundamental law. The Framers then created a constitution that would serve as a protective extension of the Declaration's established principles. Although the Constitution serves as the people's fundamental law, the Courts possess the power to interpret the Constitution through their powers of judicial review."

In summary, Madison writes in Federalist 51 that "In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government."

Unit 1
Question 3

1

It is important to attempt to envision the life of a mid-eighteenth century farmer such as Mr. Phillip Taylor who wrote, "I am living in God's noble and free soil, neither am I slave to others...I have been on American soil for two and a half years and I have not been compelled to pay for the privilege of living. Neither is my cap worn out from lifting it in the presence of gentlemen." From this simple account, it should be obvious that Mr. Taylor was fully enjoying the unalienable rights of life, liberty, and the pursuit of happiness. The Founders broke bread with the Mr. Taylors of the New World. They experienced the same joys and successes that had been previously denied their forefathers in England. Consequently, they set forth on a quest to ensure that their fellow colonists would be guaranteed the chance for the same joy of living experienced by Mr. Taylor.

It would be and arduous task, beset with unforeseen obstacles. In attempting to establish a limited government, there would be abuses of power, not only from London, but from the colonial governments themselves. Some early colonial governments persecuted those who refused to conform to established religions. In 1634 Anne Hutchinson was preaching a theory of salvation contrary to official Puritan beliefs. Brought to trial, she was cast out of the colony and branded a "heathen". She fled to Rhode Island where religious dissenters were tolerated. The royal charters echoed the ideals of the Magna Carta which stated that all Englishmen, wherever they went, enjoyed certain fundamental rights, which needed to be periodically confirmed in official documents. This tradition became a fundamental part of our American constitutionalism that eventually led to the Bill of Rights.

Can anyone doubt that a high percentage of Idaho's population would fit exquisitely into Mr. Taylor' New World scenario. The term "rugged individualism" is a

most appropriate battle-cry for many aspiring Idaho politicians from Bonners Ferry to Bear Lake.

When comparing Eighteenth century American and British societies with regards to various rights, opportunities, and property, one point seems to be consistent and obvious. The greater the length of time the colonists spent in the New World, the greater the dissimilarity between England and the New World.

One critical difference greeted the colonists immediately as they embarked on their New World adventure. Undeveloped land was cheap and readily available. This fact led to a great demand for workers which translates into far greater opportunity to achieve prosperity than most people in Europe.

Secondly, in the New World, there was no nobility whose social and economic status was protected by law, whereas in England, economic and political power was based on property ownership. Thus generations of noble families had privileged status in English government and society. A well-born gentleman from England who considered manual labor beneath him could encounter survival problems in the colonies. Thus there was greater equality among Americans than among Europeans in their economic, social, and political life. Franklin, Paine and Hamilton all rose to greatness from humble beginnings in this land of unlimited opportunity.

The Mayflower Compact clearly indicates the Pilgrims desire to serve the good of all. And while the early State Constitutions reflected the classical republican models. Vermont took its commitment to natural rights literally by becoming the first state to outlaw slavery.

Unit 1
Question 3

3

Immediately following the Revolutionary War the thirteen states began to develop their own written constitutions, drawing heavily on their earlier experiences. All State Constitutions included some separation of power, reflecting the colonist mistrust of the executive power. Because our government is based on popular sovereignty the legislative branch was deemed the safest branch in which to place the most power and the most likely to protect the rights of citizens. One can only wonder, after having listened to Dr. Adler's discussion regarding our post 9-11 presidential administration, where is our "safe" branch hiding these days???

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Unit II: How Did the Framers Create the Constitution?

1. **How is the Constitution designed to limit government power in order to protect individual rights?**

   - In what ways did the Framers try to improve on the Articles of Confederation?
   - Why did Anti-Federalists believe that the design of the Constitution was insufficient to protect individual rights and, in fact, would lead to violations of rights by the new national government?

2. **What were the major conflicts of the Philadelphia Convention and how were they resolved?**

   - What arguments can you make for and against giving each state the right to send the same number of members to the Senate?
   - What arguments can you make for and against including the "three-fifths clause" and the "fugitive slave clause" in the Constitution?

3. **What were the major differences between the Federalists and the Anti-Federalists?**

   - How did the arguments of the Federalists and the Anti-Federalists reflect their points of view regarding natural rights, republicanism, and constitutionalism?
   - What is the relevance of arguments or points made by the Federalists and Anti-Federalists to contemporary events under our present government?

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Unit 2 Question 1

Abraham Lincoln was not the first to ask: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?" The Framers of the Constitution grappled with this question in Philadelphia. They designed a document to limit government power in order to protect individual rights. The Constitution is a document of enumerated powers, many of which are found in Article I Sec. 8. There, Congress is given the power to tax, to borrow and to spend. It is also given power to regulate commerce among the states and foreign nations and power to raise an army to protect citizens and secure their right of property.

Not all the powers listed in the Constitution are given to the Congress. The Framers dispersed power among the three branches giving each a specific scope. Through this separation, they insured that no part of the government could seize power sufficient to deprive citizens of individual rights. The Framers were intent on creating a government with the power to act decisively but not to act tyrannically. They gave each branch of government power to check the other two. The Congress controls the purse strings, the executive vetoes legislation, and the independent judiciary declares acts of government unconstitutional.

Finally, the Framers addressed historic instances of government infringement of individual freedoms. In Article 1, Section 9, they barred the government from creating ex post facto laws or bills of attainder. The government may not suspend the writ of habeas corpus unless "the public safety may require it" as defined by Ex Parte Milligan.

The framers moved to repair the threats to private property occurring under the Articles of Confederation. Shay's rebellion highlighted the need for a stronger national government and prompted them to give Congress the power to determine the value of currency and to regulate commerce. These were buttressed by the creation of an executive branch with authority to protect citizens' rights and enforce legislation.

The Anti-federalists believed the Philadelphia convention had, in fact, gone too far in the creation of the national government. Their uncertainty about a federal sharing of power and a national government, which acted directly on the people, was evidenced by their skepticism of

the necessary and proper clause found in the final paragraph of Article 1 Section 8. The Anti-federalist Brutus responded to the necessary and proper clause: "... it is a truth confirmed by the unerring experience of ages, that every man, and every body of men invested with power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way."

Already anxious about a too-powerful national government, Anti-Federalists were also concerned only the lower house of the legislative branch and no other federal officials were chosen directly by the citizens. This proposed system diminished the people's direct control of the national government and engendered their fear the government would be free to abuse individual liberties.

The Anti-federalists, alarmed the new government would not protect individual rights, called for the addition of a bill of rights. Throughout the ratification process, the Federalists maintained a bill of rights was not necessary. However, at the first session of the new Congress, James Madison conceded: "If all power is subject to abuse, ... then it is possible the abuse of powers of the General Government may be guarded against in a more secure manner than is now done." Madison led Congress in drafting the first amendments commonly heralded as the "Bill of Rights".

James Madison may have acquiesced concerning the Bill of Rights, but many other Anti-federalist criticisms of the Constitution persist. In Idaho it is not uncommon to hear detractors of the federal system berate
unfunded mandates, land-use policies, national regulations for drinking water, and programs to reintroduce wolves and grizzly bears. Citizens of the first
Congressional district in Idaho proudly elected state-sovereignty candidate Helen Chenoweth three times. Following September 11, Congressman Butch Otter voted against the Patriot Act for fear he would be giving away the rights of Idaho citizens.
After celebrating over 200 years of continuous government under the Constitution penned in Philadelphia, the issues surrounding the debates at the convention still resonate in political discourse throughout our state and nation.

Unit Two, Question 2

What were the major conflicts?

The first major conflict at the Philadelphia Convention was over the issue of representation. Two plans were debated. In the Virginia Plan, congress would have a two-house legislature based on proportional representation. Larger states supported this plan arguing that equal voting power should be given to equal numbers. Small states feared domination unless each state had equal voting power, leading to the development of the New Jersey Plan with a one-house legislature based on equal representation.

Resolution of the crisis over representation came in the form of the Great Compromise. The compromise called for a House of Representatives based on proportional representation. It also called for a Senate based on equal representation allowing each state legislature to choose two senators.

Having two senators per state would keep the support of the small states because large states would be unable to dominate the upper house and bills originating in the House would have to be approved by the Senate.

If the Senate were based on proportional representation, small states would have less influence over important powers such as ratification of treaties. Equal representation is troublesome

because it translates into citizens of smaller states having a larger voice in government.

The issue of representation has endured both at the federal and state level. In 1964, the Supreme Court in Reynolds v. Sims established state legislative districts must be equally populated, embracing James Madison's thought: "If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all"

Proportional representation was felt locally in Idaho after the 2000 Census. It took three attempts to create the new district boundaries according to the state requirement of having equal population in each district.

Sectional differences were felt beyond the issue of representation. They arose from the diversity between northern and southern economies. The north wanted regulation of commerce and the South wanted support for slavery.

Delegates developed concessions that satisfied both regions. Northern states benefited because Congress could regulate interstate commerce. Southern states gained assurance the national government would not interfere with the slave trade before 1808 and runaway slaves would have to be returned to their masters under the fugitive slave clause. This was a critical balance. The South was concerned the federal government through

regulation of commerce would pass legislation limiting their ability to trade effectively. They were willing to grant this economic power providing their labor force was protected.

Southerners also benefited due to the addition of the three-fifths clause allowing states to count a slave as three-fifths of a person. It may seem contradictory that the southern states wanted to count slaves as population. Because on one hand, southerners argued that slaves were dependents, like children. On the other hand these same slaves were classified by the south as chattels personal and therefore could not become citizens. Some northern states counted free blacks therefore slave states reasoned that blacks in the South should be counted as well.

Although the North was reluctant to accept this reasoning, they concluded that slaves counted towards representation could also be taxed. Because of the fear of a strong national government, many states justified leaving the issue of slavery up to individual states because state sovereignty was closest to the people.

Today it seems difficult to imagine how many Framers, who opposed slavery, did not seize this opportunity to attack the institution of slavery as a direct violation of the principles of life and liberty embedded within the Declaration of Independence. At the time of the Philadelphia Convention, Framers needed to ensure

that southern states would ratify the Constitution. Northern states conceded on slavery issues therefore to save the union.

Unit 2 Question 3

The Federalists argued that the greatest jeopardy to natural rights was a weak government unable to protect citizen's liberty. They believed people were basically selfish, concerned with promoting their own self-interests at the expense of the common good. A strong central government could "check" this tendency, whether it manifest itself through criminal individuals, dissident groups, or rogue states. They believed a representative government, established through a liberal interpretation of constitutionalism, was the only way to protect the sovereignty of the people, and the legitimacy of its power.

The Anti-Federalists had a general mistrust of government, especially a distant, all-powerful one. They thought the government the Federalists had created with the newly written Constitution, was too large, too powerful, and too disconnected from the people, thereby posing a threat to their sovereignty and natural r[illegible]ts. The Anti-Federalists viewed both the "necessary and proper" and the "general welfare" clauses of the Constitution as giving too much power to the federal government.

This vast Federal power would squash the states' power and

drive a wedge between the people and their most direct means of representation, the state. These fears would later be realized in *McCulloch v. Maryland*, 1819 which greatly expanded the Federal government's power through the "necessary and proper" doctrine. Writing for the majority, Chief Justice Marshall wrote about Congress's power "let the end be legitimate, let it be within the scope of the Constitution, and (using) all means which are appropriate".

While Federalists and Anti-Federalists both believed in a republican form of government, the Federalists were convinced a federal republic would be most efficient. The Anti-Federalists preferred republicanism of a more confederate nature.

More than 200 years later the debate still rages. States rights advocates can trace their ideology to Patrick Henry and the Anti-Federalists. Those that believe that some issues are too large, complicated and expensive for states to handle; are the defenders of modern federalism.

Idaho is uniquely positioned to be in the middle of this debate. With much of Idaho consisting of federal lands, and thus under federal control, Idahoans often view the federal government

as that evil stepmother that technically has jurisdiction over you, but knows little of what you really want and need.

Shane:

Today's Anti-Federalists march under such banners as the "Sagebrush Rebellion", "Shovel Brigade" and most recently "Fish or Farms". They consistently believe that they, the locals, know better of how to manage and use public lands. Federalists argue that the key word in the "Anti-Federalists" public lands policy is "use". They want to "use" the land for their own local self-interest, with little regard for the common good, or the consequences of this "use". Yet, Anti-Federalists retort that they, the people living in the area, are the "common good". They argue, 'Who should control the land, those that live and work on it, or a distant, unresponsive federal bureaucracy'?

Linda:

Control and power are also issues at the forefront of the War on Terrorism. We have witnessed the executive branch using power not granted to it in the Constitution. Congress has allowed and even encouraged this power grab, because it is an election year, and no one wants to be seen as soft on terrorism.

Candi:

Yet Congress is giving up powers that they have no Constitutional or ethical right to do. Madison writes in *Federalist*

Unit 2 Question 3

No. 47 "The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny". Many would argue that we are creating another King George.

Kelly:

Anti-Federalists at the time of the ratification of the Constitution argued that just such a thing was possible through the weakness of the 'separation of powers' doctrine. Federalists told them not to worry; after all there is a system of checks and balances in the Constitution. Few of these founders could have imagined that modern politicians would be too self-concerned and lacking the courage to use these "checks" to preserve the power of their own branch.

Unit III: How Did the Values and Principles Embodied in the Constitution Shape American Institutions and Practices?

1. **How did political parties arise in American politics?**

   - What were the objections of the Federalists to political parties? What relevance, if any, do these objections have today?
   - What advantages and disadvantages do political parties have in a democratic system of government?

2. **What is the power of judicial review and how was it established in the United States?**

   - Is the power of the Supreme Court to overrule the will of a congressional majority consistent with the principle of representative government? Why or why not?
   - If the Supreme Court did not have this power in what other way could the rights of minorities be protected from the majority? Take and defend a position on which way you think the rights of minorities should be protected.

3. **How does a federal system of government differ from a unitary or confederate system of government?**

   - In our federal system of government, where does sovereignty reside?
   - In matters of public education and public health care, should the federal government or the state governments have the responsibility for making and enforcing laws? Explain your position.

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Mock Congressional Hearing
July 20, 2002
Unit III, Question 1

Article 1, Section 8, Clause 18 of the US Constitution states, "To make all laws which shall be necessary and proper for carrying into Execution the forgoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The interpretation of this clause, known as the necessary and proper clause, prompted the rise of political parties in America. Specifically, disagreements over this clause arose between Secretary of State, Thomas Jefferson, and Secretary of Treasury, Alexander Hamilton; both members of Washington's Cabinet.

Jefferson believed the Necessary and Proper Clause was too vague. He felt that the interpretation would give the Government too much power. He also believed the Clause should be interpreted as if it read "absolutely and indispensably necessary." If interpreted in this manner it would limit the power of Congress from abusing the liberties of the citizenry.

Hamilton believed the Constitution gave the federal government certain broad responsibilities and the necessary and proper clause gave Congress the powers to carry out those responsibilities.

For example, Hamilton thought the creation of the national bank was a

necessary and proper method of carrying out the responsibilities given to Congress by the Constitution, such as collecting taxes and regulating trade.

Jefferson disagreed with the creation of the bank because he believed if the Constitution meant for Congress to create such an institution it would have been included in their powers.

Jefferson and Hamilton also disagreed on a litany of other Constitutional principles. Jefferson favored a weak central government and strong state government; Hamilton favored a strong central government. Jefferson's interpretation of the Constitution was strict while Hamilton supported a loose interpretation. Additionally, Jefferson believed liberties must be protected and thought a Bill of Rights was necessary. Hamilton thought that individual liberties should be restricted.

Those who aligned themselves with Jefferson became known as Democratic-Republicans; those who aligned themselves with Hamilton became known as the Federalists. These were the first two organized political parties in America.

Political parties were never mentioned in the Constitution because the framers feared the rise of factions. At the time political parties and factions were considered the same. James Madison in Federalist 10 defined a faction as, "a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest,

adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."

He felt factions were dangerous because they are self-promoting, and not interested in the common good of the people. Factions do exist though! These include such single-issue groups as the Sierra Club, Right to Life, and the NEA. None of these factions carry all political power. Madison believed the nation's diversity and size and complexity of government, would make it very hard for any one faction to take control. He was right.

Political parties, on the other hand, are not factions because they do not fall under Madison's definition. Political parties are not, "adverse to the rights of the citizens." If they were, then no candidate of a major political party would ever get elected.

Political parties provide both advantages and disadvantages to the American political process. They provide people with a way to organize support for candidates into public office. They persuade people to vote, and by joining a political party, people indicate their support for the policies of that party. They also serve as an outlet for popular passions and provide forums for deliberating about public policy. Finally, they can provide a way of making sure that people demand a change of government, not a change of constitutions during times of rapid change.

As with advantages come disadvantages. Some of which include the balance of government through control to the ballot. The two political parties control access to the ballot and can make it impossible for a third party to be considered. The system is also set up as "winner takes all." Finally, Political parties are so consumed about re-election that the power to persuade rules the ballot.

While the constitution did not mention political parties, they rose partly because of Jefferson and Hamilton's interpretation of the Constitution. The political parties today are not factions but merely an accepted part of the political system.

Mock Congressional Hearing
July 20, 2002
Unit III, Question 2

Article III of the United States Constitution creates the federal judicial branch, yet nowhere does it give this branch the power of judicial review. But what is judicial review?

Judicial Review is the power of the judicial branch of a government to decide if acts of the legislative or executive branches violate the constitution.

If judicial review is not mentioned in the Constitution, then how did judicial review evolve and how was it established in practice in the United States?

The Founders could reflect to the British rule's Privy Council which had veto power over colonial legislatures. After the American Revolution some state courts had declared laws made by their own legislatures unconstitutional.

Also, the framers may have anticipated the Courts exercising those powers. During the ratification debate, Hamilton stated in Federalist #78 "... A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning..."

Jefferson held the opposing view ..."the opinion which gives to the judges the right to decide what laws are constitutional and what not...would make the Judiciary a despotic branch."

Although the framers did not include the specific power in the language, their writings and historical experience reflected their intent for this power to be held by the judiciary.

How was judicial review established? The judicial branch simply created the power by exercising the power.

In 1796, in Hylton v U.S., the Court upheld the constitutionality of a federal tax law on carriages implying the court could have ruled this federal law unconstitutional. This power was additionally implied in Calder v Bull in 1798.

Judicial Review became the generally accepted practice of the Court in 1803 as a result of the Marbury v Madison decision.

Chief Justice Marshall concluded in the majority opinion

" It is emphatically, the province and duty of the judicial department, to say what the law is..."

Is the Court's power of judicial review, to overrule the will of congressional majority, related to the consistency of a representative government?

If the majority makes a law that may or may not secure the rights of its citizens, it becomes the duty of the courts through judicial review to make sure that all rights of the constitution are preserved. The tyranny of the majority should not usurp the rights of all!!☺. Furthermore, consider how federal judges are chosen. The justices are selected by the president and confirmed in the Senate. The people

elect both the president and Congress. Therefore, the power of the Supreme Court to overrule a law passed by congress is consistent with representative government. Also, the court does not have unlimited powers. The Court does not petition for cases, they hear cases appealed to them. Justices may be impeached and may be removed from office.

If the Federal Courts did not have judicial review, would the rights of minorities be protected? The answer is yes. The legislative branch has secured minority rights many times. An example is the Civil Rights Act of 1964. It outlawed discrimination in public facilities.

The Executive branch has also protected minority rights. In 1957 President Eisenhower sent units of the 101st Airborne Division into Little Rock, Arkansas to enforce court ordered integration.

The rights of minorities should be protected as outlined in the constitution. The basic principles of the constitution secure the blessings and rights of all not just the majority. All three branches of government should protect these rights. Judicial review acts as a further protection of these rights. The constitution does not mention Judicial Review, but clearly from actions of the framers and the courts itself the judicial review process is an important part of securing all rights.

Mock Congressional Hearing
July 20, 2002
Unit III, Question 3

"We the people of the United States do ordain and establish this Constitution for the United States of America." Our Constitution establishes a federal system of government. This means that the people have not delegated all the powers of governing to the national government. Instead, the people have delegated certain powers to their state governments.

So why did we choose Federalism over other existing forms of government? Initially the United States was governed under the Articles of Confederation. We were a loose collection of sovereign states, which gave power to a central government for specific purposes. Unfortunately, the system did not work. Under the Articles of Confederation the national government could make laws but not enforce them. Furthermore, the national government had no power to protect the rights of citizens. These weaknesses were exploited by Shay's rebellion in 1786. This event led to the Constitutional convention in 1787.

The purpose of the Constitutional convention was to amend the Articles to ensure a more effective government. To stabilize the government it was determined the confederate system was too broken to fix. Thus they turned to history for answers. Historically the choices of governmental systems are Unitary and/or Confederate.

Unitary Governments are those in which a central government acts directly on the citizens. Local governments exercise powers granted to them by the central government. Examples are Great Britain, China or Cuba.

Confederation is a system of government in which sovereign states delegate power to a central government for specific purposes. The United States was a Confederacy prior to the Constitution.

The Framers did not choose a unitary form of government because of their recent past history with Great Britain. They also did not choose to continue in a Confederation because from their own history it did not work. Instead they chose to uniquely blend both unitary and confederate forms of government to establish federalism.

Although federalism divides power between state and national government the ultimate authority is still held by the people. Remember, the Constitution begins with, "We the People". Sovereignty therein lies with the people.

To ensure their protection and security, the people, through the Constitution carefully delegate powers to both the national and state governments. In Article 1 Section 8, for example, the people granted powers to Congress to tax, borrow money, raise an Army, regulate commerce and punish pirates on the high seas. Article 2 defines the duties of the president. Article 3 establishes the power of the

judiciary. Article 4 and Amendment 10 establishes the parameters by which states exercise their power.

In Federalist 45, Madison explains how the federal system is supposed to work. He says, "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.... The powers reserved to the several states will extend to all 3 objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

Who should be responsible in the matters of public education and welfare, the federal or state government? According to Madison these issues should be reserved to the matters of the state. But since the ratification of the Constitution, the federal government has grown in both size and power.

This group is divided as to where the power should reside concerning matters of public education and public health care, as is the nation. There are those who accept the Jeffersonian viewpoint that these matters are purely local. Others can join with the Hamiltonian view that these matters are of a national concern and should be handled by the federal government.

Because the framers did not exclusively designate these responsibilities in the Constitution they will remain debated.

Unit IV: How Have the Protections of the Bill of Rights Been Developed and Expanded?

1. **What are the basic purposes of the Fourteenth Amendment's equal protection and due process clauses?**

   - How are the equal protection and due process clauses related to the principle of limited government?
   - What are some specific examples of how the equal protection and due process clauses of the Fourteenth Amendment have been used to expand the protections of the Constitution?

2. **What constitutional issues were in dispute during the Civil War?**

   - Were any or all of these issues resolved by the Civil War?
   - How can the denial of any state's right to secede from the Union be justified in terms of the natural rights philosophy?

3. **Which has been more important in the extension of rights to all Americans, the Supreme Court or the political action of individuals and groups?**

   - Describe the roles of the legislative, executive, and judicial branches of the government in the expansion of rights.
   - Are groups that attempt to extend the protections of the Constitution to all Americans interest groups (what Madison called "factions")?

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Unit IV, Question 1

What are the basic purposes of the Fourteenth Amendment's equal protection and due process clauses?

Originally the 14th Amendment was ratified by a vindictive congress of Radical Republicans to neutralize President Andrew Johnson's carrying out of Lincoln's 10% plan. The equal protection clause was to force southern whites to live with newly emancipated former slaves. The due process clause was aimed to prevent victimization of the African American population at the hands of whites.

This amendment gave new importance to the principle of equality in the Constitution. As one of the 14th Amendment's authors, Senator Jacob M. Howard of Michigan, declared, "It establishes equality before the law, and it gives, to the humblest, the poorest, the most despised . . .. the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or those most haughty. . . . Without this principle of equal justice to all men and equal protection under the shield of the law, there can be no republican government and none that is really worth maintaining."

Today, the 14th Amendment means ramps to all public buildings for the handicapped, women's basketball, gay rights and affirmative action.

How are the equal protection and due process clauses related to the principle of limited government?

Ignored until the 20th Century, the equal protection clause has been applied by the courts to protect the rights of all individuals under the authority of the Constitution. The due process clause, by definition, requires all government actions be conducted according to the rule of law, that by its nature due process limits government power by the use of fair and generally accepted legal procedures.

What are some specific examples of how the equal protection and due process clauses of the 14th Amendment have been used to expand the protections of the Constitution?

Supreme Court decisions offer several specific examples of how the equal protection and due process clauses of the 14th Amendment have expanded the protections of the Constitution. Perhaps most famous is the 1954 decision *Brown* v. *The Board of Education*. Chief Justice Earl Warren wrote in this unanimous landmark decision that "separate is inherently unequal" and violated the equal protection clause of the 14th Amendment, thus overturning a century of legalized discrimination brought about by *Plessy v. Ferguson*. *Brown II* came before the Court to determine how to provide relief "with all deliberate speed." Yet districts used delay tactics resulting in a dismal 20% black student integration to white schools in fourteen years following the decision. In 1968 the Court ruled in *Green v. County School Board of New Kent County, Virginia* that segregation must end "at once." By the 1980s, with the help of lower court rulings, the shift has been notable. Today most Americans believe *Brown* to be a fully accepted decision.

In another unanimous decision, *Reed v. Reed (1971),* the Burger court ruled that an Idaho law favoring Cecil Reed as executor of his son's estate over his ex-wife Sally Reed, violated the 14th Amendment's equal protection of the laws. The Court for the first time used the equal protection clause to overturn a law that discriminated against an individual based on her gender. The Court's basis for its decision was called the "rational basis test". According to this test, state laws, like Idaho's, were constitutional if there was a reasonable public interest. The Court said there was no such public interest. The Court decided in favor of Sally Reed. Chief Justice Burger wrote: "To give a mandatory preference to members of either sex . . . merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the equal protection clause of the 14th Amendment.

In 1996 the Rehnquist Court in *Romer v. Evans* struck down an amendment to the Colorado state constitution that denied the right to seek protection from the government against discrimination. This

involved the gay and lesbian community that the Court determined had been singled out and denied equal protection.

Since the 1970s Americans have tended to agree about the constitutionality and justice of guaranteeing equality of civil rights and liberties to all individuals in the United States, regardless of race, ethnicity, or gender.

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Unit IV, Question 2

What Constitutional Issues were in dispute during the Civil War?

The Fifth Amendment, states no person can be "deprived of life, liberty or property without due process of the law" and slaves were perceived as property. In the view of many founders the institution of slavery would disappear over time and would cease to be a troublesome issue for the nation. However, due to the economic shift from tobacco to cotton cultivation, slavery became increasingly necessary for agricultural production in the South. In contrast, conventional wisdom in the North viewed slavery as barbaric and inconsistent with the principles of the foundations of the nation. Consequently, slavery grew into a volatile political and moral issue.

The other constitutional issue was the right of the States to secede from the Union. In the minds of Southerners they were not responsible for the crisis in 1861. The general consensus was that the North had abandoned the true principles of the Union through northern resistance to the Fugitive Slave Act and to slavery in Kansas. In the minds of many Southerners the actions of the North were a break from the principles of the Constitution. Above the Mason-Dixon Line the idea of secession was rejected as absurd while the Union was *perpetual* and indissoluble by nature and states could not leave at will.

Were any or all of the issues resolved by the Civil War?

The surrender at Appomattox ended the shooting war between the North and the South. 618,000 American soldiers had perished in the bloody conflict. The search began to find meaning in the slaughter of so many young men. To the North the surrender meant victory and vengeance, to the South a humiliating defeat. What was in store for those thousands who had been held as slaves? What did freedom look like to those unchained by the force of arms?

The question of slavery, however, was far from resolved. Despite legal efforts through the 13th, 14th, and 15th Amendments, it was not until the mid-Twentieth Century and the advent of the Civil Rights Movement that laws were enforced. Descendents of slaves pushed for enforcement of these long-existing constitutional guarantees.

As the guns became silent on the battlefields of the defeated South, newly freed slaves woke up to the realities of emancipation. With no money, land, or livestock most returned to their former plantations and begged for work. Sharecropping replaced the plantation system. Slave codes regulating public conduct were replaced by Black Codes restating the same rules. Southerners, resenting northern meddling, organized terrorist groups such as the Ku Klux Klan and

Knights of the White Camellia. Intimidated blacks who were set adrift with the removal of Union troops pinned their hopes on the 13th, 14th, and 15th Amendments to protect them. The 13th Amendment did no more than keep Freedmen off the auction block. Sharecropping and the crop lien system chained blacks to the land as they always had been. The 14th Amendment after *Plessy v. Ferguson* was rendered meaningless for African Americans. And finally the 15th Amendment, considered a cure-all for southern blacks, was circumvented and sabotaged by white southerners using the grandfather clause, literacy tests, and poll taxes.

The question of secession was resolved conclusively by the war. By 1869 the Supreme Court reaffirmed the indissoluble nature of the Union and that secession was impossible. The case, *Texas v. White,* settled the matter.

How can the denial of any state's rights to secede from the Union be justified in terms of the natural rights philosophy?

Lincoln viewed the action of the South not as secession, which he deemed impossible, but as a "domestic insurrection". The security of the Union and the people of the Union were endangered by this illegal rebellion. Like a man who alone decides to drill a hole in the bottom of the boat, endangering all on board, so the actions of the Southern States endangered the survival of the rest of the Union. Similarly, as the man on the boat must be stopped and the hole plugged for the good of the many, so must the government stop the rebellion for the good of the many. Lincoln restated this principle in his Gettysburg Address when he said "Government of the People, By the People, and For the People shall Not Perish from the Earth". Lincoln viewed the rebellion in the Southern States as diminishing the liberty and rights of the American people whose rights could only be preserved by maintaining the Union.

Unit IV, Question 3

Which has been more important in the extension of rights to all Americans, the Supreme Court or the political action of individuals and groups?

Although American society has indeed become more inclusive of recognizing individual rights, the endeavor has certainly required the tenacious efforts of individual citizens and groups. Both the judiciary and the individual have had roles in extension of civil liberties. However, the role of the individual as decisive has been the center of the evolution of rights. Courageous pioneers set the stage for challenges in the courts. Prominent names include, Dr. Martin Luther King, Susan B. Anthony, and Thurgood Marshall, all of whom provided the legwork that culminated in airing of issues in courts.

In *Gideon v. Wainwright*, 1963, indigent habitual criminal Clarence Gideon found himself incarcerated in the state penitentiary due to repeat low level offenses. Mr. Gideon, was forced under Florida law to provide his own defense simply because he was not looking at a capital charge. Gideon was poor and could not afford a reasonable defense. he was subsequently found guilty and sentenced to Raiford Prison. In the prison library Mr. Gideon found in the 6th Amendment that he indeed was afforded the right to counsel. Mr. Gideon petitioned the Supreme Court to hear his case and won. A single individual in this episode, with, of course, the aid of assistance from the legal system, changed the meaning of due process for all of us, even the poor and indigent.

Many other stories similar to Mr. Gideon's incorporated the guarantees of the law, establishing the trend to incorporation -- applying these principles through the membrane of the many states. The Judiciary has recognized the principle of existing guarantees and over time, through persistence, has granted enforcement of these rights. However, the readiness of the Court to hear cases like Gideon's depends upon individuals too. Without the leadership of Chief Justice Earl Warren promoting the Gideon case, the outcome may have been different.

Describe the roles of the legislative, executive and judicial branches of the government in the expansion of rights.

Perhaps one of the best examples of legislative, executive, and judicial interplay is *Brown V. the Board of Education of Topeka*. In this case Linda Brown, an eight-year-old from Topeka, Kansas, was forced by segregation law to attend a distant elementary school though one was in her neighborhood. The NAACP elected to argue the Brown case under the equal protection clause of the 14th Amendment. The Supreme Court, now headed by activist Earl Warren, found in favor of the Browns, reversing the *Plessy V. Ferguson* ruling of 1896 of separate-but-equal facilities.

In 1957, Central High School in Little Rock, Arkansas refused to be bound by the court's decision. President Eisenhower reluctantly concluded that the state must be compelled to obey a federal court decision. Accordingly, the President ordered the 101st Airborne to enforce the admission of nine black students to the high school.

In the following years the civil rights movement accelerated its activities. The United States Congress responded with the passage of various pieces of legislation. These included the Civil Rights Act of 1957, which created a permanent civil rights commission; the Civil Rights Act of 1964, which prohibited segregation in public facilities; and Voting Rights Act of 1965. This is a good example of all three branches of government working in tandem to resolve a problem and extend rights to all Americans.

Are groups that attempt to extend the protections of the Constitution to all Americans interest groups (what Madison called "factions")?

Madison defined a faction as a group of people that seeks to promote its own interests above the interests of other individuals or groups. He was convinced that the greatest danger to individual rights came from groups who might use the government to serve their own interests at the expense of others. Madison's definition of factions was very negative. While today there are interest groups that fall into Madison's definition, many other interest groups provide positive contributions toward extending the protections afforded by the Constitution to all Americans. The Civil Rights movement is an excellent example of the extension of rights as a fulfillment of justice. With so many groups promoting so many causes the din gets very loud. Those who push to make their claims in the courts must often do so at the expense of opposing viewpoints. Water use is a good case in point. Some groups push agricultural needs, while others demand hydropower uses. So focused are these counter groups that solutions are sometimes prolonged indefinitely. The process is overwhelming but necessary for all individual and groups voices to have their views heard.

Unit V: What Rights Does the Bill of Rights Protect?

1. **Why have First Amendment rights been viewed as essential to the functioning of a free society?**

   - In what ways have these rights been of particular importance to women and minorities?
   - Although these rights are considered essential in a constitutional democracy, it is sometimes argued that they must be limited. Under what circumstances, if any, do you think this is justified? Explain your answer.

2. **In what ways are the establishment and free exercise clauses similar and dissimilar?**

   - What historical lessons and personal experiences of the Founders led them to safeguard these rights in the First Amendment?
   - How might these two clauses come into conflict, and what criteria do you think should be used to ease this conflict?

3. **What is meant by procedural due process and why would a free society be impossible without it?**

   - What are the historical and philosophical sources of procedural due process?
   - How are the powers of all branches of government limited by procedural due process?

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- Although these rights are considered essential in a constitutional democracy, it is sometimes argued that they must be limited. Under what circumstances, if any, do you think this is justified? Explain your answer.

The First Amendment rights of freedom of expression and thought are essential to the functioning of a free society. Indeed, it is difficult to imagine a society without free thought and expression as being "free" at all. This was clearly recognized by the early American colonists and the Founders of our constitutional democracy. In 1641, section 12 of the Massachusetts Body of Liberties stated that "Every man … shall have liberty to … present any necessary motion, complaint, petition, Bill or information". The significance of free thought and expression in government was reaffirmed by the Founders in Article I, Section 6 of the Constitution establishing immunity from prosecution of members of Congress for opinions expressed.

Free thought and expression make it possible for individuals to consider the relevant issues in their lives and form opinions. Respect for these opinions promotes both personal growth and dignity.

Freedom of expression is also important for the advancement of knowledge. British philosopher, John Stuart Mills, said, "progress is possible *only* when all points of view can be expressed and considered".

Freedom of expression is a necessary part of our representative government. If government is to respond to the will and needs of the people, they must have open access to information, form their own conclusions, and be able to freely communicate with their representatives. Open access to information is also necessary for the people to be able to decide how well the government is doing its job.

Free thought and expression allows for, indeed promotes peaceful social change. This has been especially important for women and other minorities who, at times, have been denied the opportunities and dignity enjoyed by others. In the early struggle for women's suffrage, Susan B. Anthony was free to state, "We cannot forget … that while men of every race … have been invested with the full rights of citizenship under our hospitable flag, all women still suffer the degradation of disenfranchisement." Reverend Martin Luther King, when defending the Montgomery Bus Boycott, said

"One of the great glories of democracy is the right to protest for right." Student rights of expression were affirmed in the John and Mary Beth Tinker Case. Japanese Americans who lost their freedoms during WW II have the right to protest and ask for compensation. Native Americans have the right to make the government aware of their needs and wants.

Freedom of expression is essential for the protection of all individual rights. One must be allowed to speak out when they feel their rights have been violated. Those accused of crimes now have the right to an attorney largely because Clarence Earl Gideon was free to petition the government even while he was in prison.

While free thought and expression are vital to a free society, our courts have consistently agreed that the free expression of ideas may not be used to interfere with the rights of others. Thus, governing bodies have been empowered to regulate the time, place, and manner of expressions. One may not be able to express opinions using a loudspeaker at night, interfere with the normal daily activities of others, or incite others to violent or unlawful action. This does not mean that unpopular ideas may be suppressed while other, more acceptable ones are not. The specific content of speech may not be suppressed unless it is found to threaten national security (clear and present danger), be obscene, falsely defame the character and reputations of others, or to defraud. This protection of unpopular ideas is often difficult, but significant. Justice Oliver Wendell Holmes wrote in United States v. Schwimmer (1929), "If there is any principle of the Constitution that more imperatively calls for attachment that any other, it is the principle of free thought - not free thought for those who agree with us, but freedom for the thought we hate." This idea was affirmed by the historic decision in Texas v. Johnson (1989) when Justice William Brennan stated, " If there is a bedrock principle underlying the First Amendment, it is that Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." As long as we understand and believe in the notion that defending your enemy is the only way for a free society to protect itself against its enemies, then our society stands a good chance of remaining free.

Unit V: What Rights Does the Bill of Rights Protect?

2. In what ways are the establishment and free exercise clauses similar and dissimilar?

    - What historical lessons and personal experiences of the Founders led them to safeguard these rights in the First Amendment?

    - How might these two clauses come into conflict, and what criteria do you think should be used to ease this conflict?

"One nation under God." The recent controversy in federal court over these four words is just the latest skirmish in the long history of the Supreme Court's holy battles. When one reads the Bill of Rights, it is clear that the Founders placed a high premium on freedom of religion because the first sixteen words deal with that right: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, . . ."

The establishment clause and the free exercise clauses are similar in that both pertain to the relationship between government and religion. They are distinctly dissimilar in that the

establishment clause is designed to keep religion out of the affairs of government whereas the free exercise clause is designed to keep the government out of the affairs of religion.

It is easy to see why the Founding Fathers placed such a high premium on guaranteeing freedom of religion. Ever since the Reformation in the 1700s, the history of Europe was the history of religious wars. The monarchs of European nations established an official religion for their country and often persecuted or killed non-believers. With settlement of the New World, some colonists, specifically the Puritans, fled the persecution they faced in Europe only to practice intolerance in their own colony. One notable exception to this practice of religious intolerance was the colony of Rhode Island which protected religious freedom in its charter of 1636.

In the 1730s, the Great Awakening spawned the birth of dozens of diverse religious groups and this religious diversity increased the people's awareness of the need for religious tolerance. In 1786 the state of Virginia adopted the Virginia

Statute for Religious Freedom. Thomas Jefferson was so proud of his authorship of this statute that it was one of three accomplishments he had etched on his tombstone. This awareness of the need for religious tolerance was also evident during the ratifications debates over the U. S. Constitution when six states proposed amendments to the Constitution guaranteeing religious freedom. So, in 1789, when James Madison proposed the Bill of Rights to the first Congress, it was no surprise that the first amendment contained this all-important freedom.

The First Amendment was made applicable to the states in *Everson v. Board of Education*, 1947 when Justice Hugo Black used Jefferson's phrase that the First Amendment created "a wall of separation between church and state." The Supreme Court rejected school-mandated prayer in *Engel v. Vitale*, 1962 and struck down required reading of Bible verses in public school classrooms in *Abington School District v. Schempp,* 1963. These two decisions create a strong statement by the Court that there should be a strict separation between church and state.

The Supreme Court first applied the free exercise clause to the states in *Cantwell v. Connecticut,* 1940 protecting the right of Jehovah's Witnesses to peacefully distribute literature with the intent of reaching potential converts. However, the Court has also ruled that the right to free exercise of one's religion is not absolute. In *Reynolds v. U. S.* in 1879, the Court upheld a federal law which outlawed polygamy.

These two clauses pertaining to religious freedom often come into conflict with each other. Does federal support for secular education programs in a church-affliliated school violate the establishment clause or does denial of federal support constitute a violation of the free exercise clause? The Court resolved this conflict in *Lemon v. Kurtzman*, 1971. Known as the Lemon Test, government activity must meet these three criteria: 1) the activity must have a secular or nonreligious purpose; 2) the activity can neither promote nor interfere with religion; 3) the action cannot result in "excessive entanglement" of government with religion. The case of *Agostini v. Felton,* 1997 reaffirmed that government

funds can be used to remediate students in private religious schools as long as the funds do not promote religious beliefs.

Will the federal courts eliminate the phrase "one nation under God" from the Pledge of Allegiance? That "holy ground" has yet to be trod by the Supreme Court.

Unit 5, Question 3

What is meant by procedural due process and why would a free society be impossible without it?

...what are the historical and philosophical sources of procedural due process??

.....how are the powers of all branches of government limited by procedural due process??

Let us not, I beseech you, sir, deceive ourselves longer.

We petitioned for redress and our petitions were answered only by repeated injury.....We have been spurned with contempt at the foot of the throne.....
There is no longer any room for hope..
If we wish to be free.....WE MUST FIGHT!!!

I repeat it, sir, we must fight!!!!!!

Soon the words of Patrick Henry were not just flaming rhetoric before the Virginia Convention, but were in part the words which inflamed the emotions and belief that a nation of free men really could be established. An integral part of their thinking became a concept we refer to today as Procedural Due Process defined as: the constitutional limits on the power of the government designed to protect the rights and liberties of the individual.

Historically the concept dates back to the Magna Charta Petition of Rights and the English Bill of Rights.

Philosophical roots are first discovered in the teachings of John Locke (1690) when he develops the premises that:

....government is based on consent of the governed

.....man's natural rights are life, liberty and property and proceeds to draw the conclusion.... ..... the worth of government is its effectiveness in securing natural rights

Locke sees the natural rights as the "essence of humanity" Jefferson called them "Unalienable" and Hamilton affirmed their sentiments saying, " these rights must never be obscured by mortal power."

Substantive due process explicitly keeps the government from writing laws which interfere with our personal lives. Procedural due process works to maintain dignity and order when the law is applied to situations in society.

The importance of this was eloquently stated by Felix Frankfurter in (Malinski v NY 1945)....."The history of American freedom is in no small measure the history of procedural safeguards.....

Safeguards we must always protect as Dr Adler so graphically revealed with his example of the military tribunals and how they blatantly circumvent any semblance of the protections or rights found in the 4th, 5th, 6th, or 8th Amendments.

With seemingly never-ending assistance from the Republicans historically our country has managed to produce numerous black marks on its record of adherence to the tenets of the constitution.....none more succinct than the reference used by Dr. Sims looking at the analysis of former Justice Tom C. Clark who represented the Justice Department in the relocation of the Japanese-Americans during WWII, "The truth is---as this deplorable experience proves---that constitutions and laws are not sufficient of themselves.....and despite the 5th Amendment's command that no person shall be

deprived of life, liberty or property without due process of law, both of these constitutional safeguards were denied by military action under Executive Order 9066…

When trying to decide how best to create government divisions which will function as intended we need only to listen to the advice of Dr Shaw's hero, Madison, who felt that "ambition must be made to counteract ambition……..because unless there are checks people will seek to dominate."

Powers of the branches are limited through oaths requiring adherence to Articles 1, 2, and 3 of the Constitution. One might add to that the decade of the 60's which witnessed numerous precedent setting Supreme Court decisions establishing rights for the common man such as Miranda, Gideon and Escobido.

We are convinced that Patrick Henry's convictions were correct-----as free citizens we must maintain the ownership of natural rights and a procedure of redress-----and that only by remaining steadfastly resolute in their preservation will this great land of the people, by the people and for the people never perish from this earth……..

Unit VI: What Are the Roles of the Citizen in American Democracy?

1. **What do you think are the major problems confronting American citizens at the present time?**

   - What relevance do the writings of men such as James Madison have in helping us to find solutions to these problems? In explaining your answer, be specific.

   - Does the Constitution provide an adequate framework for the solution of these problems? Why or why not? If you believe changes are required, what are they?

2. **In the United States, what rights does a citizen have that a resident alien does not have?**

   - Do these rights mean that citizens have responsibilities that resident aliens do not have? If so, what are they? To what extent are these responsibilities moral and to what extent are they legal?

   - Aliens applying for American citizenship must demonstrate a basic knowledge of American history and government. Should citizens be required to take a similar test before being allowed to vote? Why or why not?

3. **Do all citizens have a responsibility to participate in the political life of the nation? Why or why not?**

   - If citizens should participate, what forms should that participation take?

   - Is civil disobedience ever a justified form of political participation? Explain your position.

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Unit VI: What Are the Roles of the Citizen in American Democracy?

Q1, part 1

What do you think are the major problems confronting American citizens at the present time?

Some of the major problems confronting American citizens at the present time concern the actions of government, the citizen's mistrust of government, and voter apathy.

According to Dr. David Adler, of Idaho State University, our government has overstepped its authority and has eroded many civil liberties. This intrusiveness of the present government is an affront to the constitution and the American people.

Another problem is the growth of citizens' mistrust of government. Events over the past 40 years that have contributed to this include the Vietnam War, Watergate scandal, the Iran-Contra arms deal, the Clinton scandals, and the Bush-Gore election brouhaha. Recent actions in Idaho government have also contributed to this mistrust. The people of Idaho passed an initiative limiting the number of terms that state officials could serve. This year, our state legislature had the audacity to repeal that law. Little wonder the people have grown to mistrust our government.

Recent voter turnout demonstrates our concern over voter apathy. In Utah, for example, the spring primary had a voter turnout of less than 10% in one precinct.

Question 1, part 2

What relevance do the writings of men such as James Madison have in helping us to find solutions to these problems? In explaining your answer, be specific.

The writings of our founding fathers, and the philosophers who influenced their thinking, are very relevant for helping us find solutions for the problems of today. As Jefferson stated in the Declaration of Independence, " a long train of abuses and usurpations," gives people the right to alter their systems of government. The very

problems that we have identified as being most pressing are very similar to the ones that led to the founding of our country. Read the latter half of our Declaration of Independence for a long list of British governmental abuses. The issues of limiting government power were central in debate over the adoption of our Constitution. Federalists, such as Hamilton, argued for the need for a strong federal government. Anti-federalists such as Mason were concerned about protecting individual rights. The groups compromised-- a new nation, "conceived in liberty" as Lincoln would later write, was born. But this debate, started over 200 years ago continues today. It is imperative that we reassess the wisdom of our founding fathers, that we read their writings, that we dialogue with their ideas.

When speaking of the work of the Constitutional Convention Franklin noted, "I agree with this Constitution with all its faults, if they are such; because I think a general Government necessary for us... I doubt ... whether any other Convention we can obtain, may be able to make a better Constitution."

Question 1, Part 3

The constitution does provide an adequate framework for the solution of the problems the country faces today. The right to amend the constitution, to take our grievances to court, to propose initiatives, to lobby, or our first amendment rights of free speech and petition provide opportunities for change. Our greatest right, the right to vote, by virtue of our citizenship, gives us the power to influence what happens within our government. As Lincoln stated, our government is "a government of the people, by the people and for the people." It exists because of the consent of the people.

Problems of voter apathy and political mistrust might be helped by a return to the principals of classical republicanism. Our nations should emphasize civic education and our democratic institutions should create new ways to involve citizens in public affairs. Promoting service learning such as volunteering in a food bank, or, as Dr. Ross Peterson suggests, allowing an open primary may encourage people to become more involved. Mail in voting could increase voter participation, as shown by Oregon's result in the last presidential election where 50% of the people voted in the primary and 80% voted in the

national election. The efforts of the Center for Civic Education as they sponsor the Freedom's Answer voter turnout effort will involve students and adults in an increase in democratic participation. In the words of Adlai Stevenson, "As citizens of this democracy, you are the rulers and the ruled, the lawgivers and the law abiding, the beginning and the end."

Question 2, part 1

In the United States, what rights does a citizen have that a resident alien does not have?

A U.S. citizen has two basic rights that a resident alien does not have; these are both political rights. He or she has the right to vote, and he or she has the right to hold public office.

The 14th amendment to the Constitution defines citizenship as follows: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the united States and of the state wherein they reside."

The political rights enjoyed by citizens of this country have been universally available only after many protracted battles over the course of our history. For example, the Constitutional guarantee of the right to vote for persons of race, color, or previous condition of servitude was not ensured until after the passage of the 15th amendment in 1870. The right of women to vote did not come until the passage of the 19th amendment in 1920. In 1924, with the passage of the Snyder Act, the Native American was finally granted citizenship. It was not until 1964 that the poll tax was made illegal, not until 1965 with the passage of the Voting Rights Act that literacy tests for voting were made illegal, and finally, not until 1971 were 18 year olds, old enough to die for their country, granted the right to vote for the elected officials capable of sending them into war.

Resident aliens, that is persons who are citizens or nationals of a foreign state, living in this country, while deprived of the political rights of voting and holding public office, do however enjoy all of the civil rights enjoyed by citizens of this country thanks to the precise wording, again of the 14th amendment, that states that, "States … shall not deprive any persons within its jurisdiction the equal protection of the laws."

Question 2, part 2

Yes, we must recognize that citizens do have responsibilities that resident aliens do not have. For example, citizens have a responsibility to serve on juries as the need arises; aliens cannot. Partially this responsibility stems from a legal viewpoint since jury selection is based on voter registration lists.

However, there are many responsibilities that both citizens and resident aliens share such as the law requiring 18 years males to register for selective service; or the legal obligation to defend the Constitution. Resident aliens and citizens are legally obliged to pay taxes and we all must obey the law.

We share moral obligations as well; being tolerant of others and their ideas, keeping informed of political and social situations that may affect us, and taking an active role in the community. As resident alien children are allowed to attend school, their parents should support school functions and be interested in their children's welfare.

Question 2, part 3

Should citizens be required to take a citizenship test before they are allowed to vote? Why or why not?

We feel that citizens should not be required to take a test before being allowed to vote. We begin the process of learning to be citizens in early childhood. At home and in the classroom, we begin to think for ourselves, to express our own opinions and to respect the opinions of others. Through such activities as student government, school projects, sports, and community and club activities, we begin to acquire the skills of teamwork, organization and debate. Practical experience has been as important as formal schooling in preparing Americans for citizenship. Americans learn the skills of citizenship through the many opportunities to participate in public affairs. In short, many of the qualities that we need for citizenship begin to develop in our early lives.

Education also will help provide us with the knowledge and skills to function effectively as citizens of a constitutional democracy. The founding fathers realized that a republican self-government would require a greater measure of civic virtue that other forms of government. They understood the importance of education to building good citizenship. In a republican self-government, each citizen has to be schooled in the ideals and principles upon which that government is based. Public schools developed rapidly to prepare Americans not only as workers in a growing economy but also as citizens committed to the principles of self-government. Beginning with dame schools during Puritan times, to the Northwest Ordinance, which, under the Articles of Confederation, provided for public education, to Article 9, Section 1 of the Idaho State Constitution, which provides for a "..general, uniform public, free school", education has always played an important part in building citizenship. Horace Mann said, "Schoolhouses are the republican line of fortifications."

Because the qualities we need for citizenship are developed throughout our lives through the influence of family and education, we feel that citizens should not be required to take a citizenship test before they vote.

Question 3: Do all citizens have a responsibility to participate in the political life of the nation? Why or why not?

Part 1

All citizens have a responsibility to participate in the political life of a nation. From the very foundation of democracy, we learn that Athenian citizens took part in government affairs at the Agora; they would be considered an idiot not to participate. As Pres. Jimmy Carter said, "The only title in our democracy superior to that of president is the title of citizen".

Only citizens vote and all citizens need to vote. We also need to be aware of our elected officials and their stand on important issues. An incumbent has a record that can be reviewed. Citizens can pass out literature, campaign for candidates, man phone banks,

and go door-to-door urging people to vote. We can attend our school board meetings, city council meetings, and pay attention to our legislatures at the state and national level.

The classical republican philosophy emphasizes our obligation to society. We need to recognize the obligation of each citizen to serve the common good of the whole community.

Question 3, part 2

If citizens should participate, what forms should that participation take?

It is imperative that citizens be active in their own governance in a variety of ways. First of all, citizens need to be informed—informed by the media, by interaction with neighbors, through interaction with elected officials.

Secondly, citizens need to be influencers—influencing others at all levels, within their family, community and beyond, by taking advantage of town meetings, forums, letter writing, lobbying and by initiating political changes, as the Idaho Constitution allows, like the initiative and referendum in Article III, section 1, and the recall found in Article VI, section 6.

Finally, citizens have the opportunity to participate directly in decision-making by serving in appointed or elected positions at the local, state, national or international level.

Opportunities for participation abound. Citizens may participate economically through boycotts and class-action lawsuits. Or they may participate socially by promoting the common good of their neighbor, as Locke would have argued for in his social contract theory.

Regardless of the form, citizens must participate, for in this representative democracy, "Your country serves you right, or it serves you right!"

Question 3, part 3

Is civil disobedience ever a justified form of political participation? Explain your position.

Martin Luther King, Jr wrote from Birmingham City jail, ".an individual who breaks the law that conscience tells him is unjust and who willingly accepts the possibility of imprisonment in order to arouse the conscience of the community..is in reality expressing the highest respect for the law."

According to John Locke's theory, civil disobedience is a justified form of political participation. Beginning with the declaration of independence, our government is bound to protect the rights of the people. When it fails to do that, it is the right of the people to alter the government. In addition, first amendment guarantees the right to peaceably assemble and to petition the government for the redress of grievances. Throughout U.S. History, measures beyond the normal scope of government functions are called for to correct a social wrong. The American revolutionaries, abolitionists, women's rights advocates, and anti-war protesters used civil disobedience tactics.

In 1961, 70,000 students, black and white were staging sit- ins and other actions to protest segregation. Scenes of civil rights protesters being attacked by fire hoses and police dogs were carried on television and in newspapers worldwide. These events shocked the consciences of many people and persuaded President Kennedy to act. He said, in June 1963, "We are confronted primarily with a moral issue that is as old as the Scriptures and is as clear as the American Constitution. The heart of the question is whether all Americans are to be afforded equal rights and equal opportunities. The time has come for this nation to fulfill its promise." The Civil Rights Act of 1964 resulted. As protected in the constitution, King said, "One of the greatest glories of democracy is the right to protest for right."

Paradox Politics Teacher Institute 2002

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